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PVH Corp.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PVH CORP., Interpleader-Plaintiff, v. LEAH KEITH-HOULE and ESTATE OF STEVEN HOULE, Interpleader-Defendants.	HONORABLE Civil Action No. **COMPLAINT FOR INTERPLEADER** (Document Electronically Filed)

COMPLAINT FOR INTERPLEADER

Interpleader-Plaintiff PVH Corp. ("PVH" or "Plaintiff"), in its capacity as administrator and fiduciary of a tax-qualified savings and retirement plan and related trust known as the PVH Associates Investment Plan ("the Plan"), by its attorneys, Lowenstein Sandler LLP, files this Complaint for Interpleader pursuant to 28 U.S.C. § 1335, and alleges as follows:

JURISDICTION AND VENUE

1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1335 because this case involves money of $500 or more and there are two or more adverse claimants

of diverse citizenship who may claim to be entitled to such money or to any one or more of the benefits thereof.

2. This Court also has jurisdiction over this action under Section 1132(a)(3) the Employment Retirement Insurance Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1001, *et. seq*. because plaintiff PVH is a fiduciary of the Plan. Thus, this Court also has jurisdiction under 29 U.S.C. § 1132 as well as federal question jurisdiction under 28 U.S.C. § 1331.

3. Venue is proper in the United States District Court for the Southern District of New York pursuant to 29 U.S.C. § 1132(e)(2) because the Plan is administered in New York.

PARTIES

4. Interpleader-Plaintiff PVH is a Delaware corporation with its principal place of business at 200 Madison Avenue, New York, NY 10016. PVH is the administrator and fiduciary of the Plan.

5. Defendant Leah Keith Houle is, upon information and belief, over 21 years of age and is a citizen of the State of Tennessee, residing at 105 Pine Cone Lane, Chattanooga, Tennessee 37415.

6. The administrator of Defendant Estate of Steven Houle ("the Estate"), Steven R. Sorenson, Esq. of Davis & Kuelthau P.O. Box 1278 Oshkosh, Wisconsin 54903-1278, upon information and belief, is a citizen of Wisconsin residing at 2905 Universal Street, Suite 2 Oshkosh, Wisconsin 54904.

FACTS

7. PVH brings this interpleader action pursuant to 28 U.S.C. § 1335 to resolve potentially competing claims to funds that it, as Plan administrator, has control over, which claims subject PVH to multiple or inconsistent liabilities.

8. Effective as of October 1, 1981, PVH established the Plan in order to continue the efficient operation of the business of PVH and its subsidiaries, as an incentive to the associates eligible to participate thereunder, and in order to provide for a portion of the livelihood of such associates upon their retirement from the employ of the Company and under certain other circumstances. The Plan is attached hereto as **Exhibit A**.

9. Steven Houle was employed as a warehouse supervisor with PVH from December 1, 2006 until April 18, 2013. He enrolled in the Plan on March 3, 2007.

10. Steven Houle's then wife, Leah Keith Houle, was named as his sole primary beneficiary.

11. On September 11, 2013, Steven Houle and Leah Keith Houle divorced. *See* Divorce Decree dated September 11, 2013, attached hereto as **Exhibit B**.

12. Steven Houle's beneficiary election was not changed following his divorce.

13. On October 8, 2014 Steven Houle died. *See* Death Certificate attached hereto as **Exhibit C**.

14. On or about January 9, 2015, PVH received a demand from the Estate of Steven Houle (the "Estate") for the proceeds of the Plan ("Plan Proceeds") stating that the Estate is "officially objecting to the payout . . . to the ex-wife of Mr. Steven Houle". According to the Estate, Leah Keith Houle waived any rights to the Plan Proceeds in the Divorce Decree. *See* January 9, 2015 demand letter attached hereto as **Exhibit D**.

15. While PVH takes no position in the outcome of this litigation, it points out the Supreme Court case *Kennedy v. DuPont*, 555 U.S. 285 (2009), held that beneficiary designations made under plan documents control over divorce decrees purporting to waive an ex-spouse's interest in the participant's benefit.

16. Accordingly, while Plaintiff recognizes its obligation to pay the Plan Proceeds valued at $48,756.79 to the person or persons rightfully entitled to receive said proceeds, Plaintiff is in doubt and is uncertain as to the party or parties entitled to receive all or any part of the Plan Proceeds.

17. Plaintiff is, by reason of said claim and possible adverse claims, exposed and subject to conflicting and adverse claims and a multiplicity of suits involving possible multiple liability on Plaintiff's part and involving costs and expenses of defending possible multiple suits seeking the recovery of the Plan Proceeds.

18. Because of the institution of this civil action and the possible conflicting and adverse claims being asserted, Plaintiff has been required to employ counsel to file this civil action, and for such purposes has employed the firm of Lowenstein Sandler LLP and obligated itself to pay said firm a reasonable fee for their attorneys' services. Plaintiff has also incurred court costs and expenses incident to this action, all of which Plaintiff avers that it is entitled to be paid or reimbursed and recover from the Plan Proceeds.

PRAYER FOR RELIEF

WHEREFORE, PVH prays that this Honorable Court will ORDER, ADJUDGE, DECREE and DECLARE:

A. That each Defendant, their attorneys, servants, agents, and employees be permanently enjoined from instituting or prosecuting any action against Plaintiff in any State or Federal Court seeking recovery of the Plan Proceeds of plan participant Steven Houle (as described above) or from seeking a determination as to the person or persons entitled to the Plan Proceeds except in the instant civil action.

B. That the Defendants be required to file in this civil action their respective claims to Plan Proceeds or to such proceeds as each may claim.

C. That the Court authorize PVH to post a bond in an amount not to exceed $500 payable to the Clerk of Court, pending the determination of this litigation. Although PVH recognizes that it may be obligated to post a bond "in an amount deemed appropriate by the Court," it respectfully requests that that amount be limited to $500 or less so that the Plan Proceeds may retain their tax-deferred status and so that as much of the assets as possible are preserved for the ultimate beneficiary.

D. PVH is ready and willing to comply with any future order or judgment of the Court with respect to the Plan Proceeds and is prepared to distribute the Plan Proceeds in such manner as the Court shall direct.

E. That upon distributing the Plan Proceeds, PVH be dismissed with prejudice from this action and discharged from all liability to the defendants or either of them in relation thereto.

F. That PVH's costs and disbursements be paid out of the Plan Proceeds.

G. That PVH's attorneys' fees be paid out of the Plan Proceeds.

H. That PVH have such other and further relief as the Court may deem just, proper, and equitable.

By: s/ Robert J. Kipnees

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Dated: February 23, 2016

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I certify that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

By: ___s/ Robert J. Kipnees____________________

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Dated: February 23, 2016